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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,040	02/20/2002	Richard G. Dalgetty	XENOP008/PXE-037.US	8481
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Beyer Law Group LLP P.O. BOX 1687 Cupertino, CA 95015-1687			EXAMINER DIXON, ANNETTE FREDRICKA	
			ART UNIT	PAPER NUMBER
			3771	
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			07/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/081,040

Applicant(s)

DALGETTY ET AL.

Examiner

Annette F. Dixon

Art Unit

3771

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5-10, 12, 13, 23-26, 28-30, 39, 40, 42-50 and 54-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5-10, 12, 13, 23-26, 28-30, 39, 40, 42-50 and 54-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the amendment filed on April 7, 2008. Examiner acknowledges claims 1, 5-10, 12, 13, 23-26, 28-30, 39, 40, 42-50, and 54-61 are pending in this application, with claims 1, 39, 42, and 48 having been currently amended, claims 2-4, 11, 14-22, 27, 31-38, 41, 51-53, and 62-64 having been cancelled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-13, 23-26, 28-30, and 39-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (6,776,158) in view of LaBauve (4,520,808).

As to Claims 1, 39, 42, and 51, Anderson discloses a gas delivery system (1) capable of delivering an anesthesia gas to a plurality of gas outlets, the system (1) comprising: an oxygen inlet (represented by the oxygen exiting the source, element 2, into the anesthesia gas source, element 9) that receives oxygen from an oxygen source; a pressure regulator (3) having an inlet that receives oxygen from the oxygen inlet and having an outlet that provides oxygen at a lower pressure; an anesthesia gas source (9) having an inlet coupled to receive low pressure oxygen from the outlet of the pressure regulator (3) and capable of adding anesthesia gas to the low pressure oxygen

(Column 4, Lines 30-45); a first gas delivery outlet (8a) coupled to a gas delivery device, and a second gas delivery outlet (8b) coupled to an induction chamber (92) and capable of providing anesthesia gas and oxygen to the induction chamber (Column 7, Lines 23-54). (Figure 1). Yet, Anderson does not expressly disclose the particulars of the first gas delivery outlet to be able to deliver gas to a plurality of living specimens. However, at the time the invention was made the particular structure of the first gas delivery outlet device was well known. Specifically, LaBauve teaches a gas deliver device for holding multiple laboratory animals horizontally disposed along a front face of the gas delivery device and capable of simultaneously providing anesthesia gas and oxygen to the multiple laboratory animals for the purpose of ensuring the laboratory animals are exposed to a uniform concentration of the anesthesia gas. (Abstract and Figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Anderson to include the particular structural elements of the first gas delivery outlet device, as taught by LaBauve to enable uniform distribution of anesthesia gas to the laboratory animals.

As to Claim 2, the system of Anderson as modified by LaBauve discloses a first gas delivery outlet comprising an outlet port (38). Anderson discloses a flow control device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified

depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 3, the system of Anderson as modified by LaBauve discloses a second gas delivery outlet comprising an outlet port (25). Anderson discloses a flow control device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 4, Anderson discloses a flow control device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having

ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 5, Anderson discloses the gas delivery system is capable of producing a flow rate between 0 L/min to 5 L/min. (Column 11, Lines 60-65).

As to Claims 6-8, and 28-30, Anderson discloses the gas delivery system contains a gas scavenger to enable the collection of anesthesia gas to be scavenged from the induction chamber. (Column 7, Line 55 thru Column 8, Line 20).

As to Claim 9, Anderson discloses a purge inlet (24) capable of providing oxygen to the induction chamber. (Column 7, Lines 58-63).

As to Claims 10, 40, 43, 46, and 48, Anderson discloses the gas delivery device comprises an inlet for receiving anesthesia gas and oxygen (7) and at least one channel (10) for communicating anesthesia gas and oxygen between the inlet and the multiple specimen interfaces. Further, LaBauve teaches the use of individual receptacles (12) sized to fit the mouse wherein the head portion of the receptacle has a conical nose-piece (Figure 3), sized to fit the nose of the mouse, and a conical structure (22) to enable uniform discharge of gases and to prevent the animal from gnawing on the device. (Column 3, Lines 40-46 and Column 4, Lines 4-18).

As to Claims 12, 24, 25, 44, 49, 50, and 54-59, the system of Anderson and LaBauve discloses the disposable sleeves having a frustoconical shape. Specifically, LaBauve teaches the use of individual receptacles (12) sized to fit the mouse wherein the head portion of the receptacle has a conical nose-piece (Figure 3), sized to fit the

nose of the mouse, and a conical structure (22) to enable uniform discharge of gases and to prevent the animal from gnawing on the device. (Column 3, Lines 40-46 and Column 4, Lines 4-18). Further, LaBauve teaches the receptacles (12) may be removed. Intrinsically, the ability of the these receptacles to be removed from the gas delivery system gives way for the receptacles to be disposed of and replaced with another receptacle unit. Thereby making the receptacle sleeve units disposable.

As to Claim 13, Anderson discloses the flow from the inlet for receiving anesthesia gas and oxygen (7) are substantially equal by the location of the flow regulator (11).

As to Claim 23, 26, and 45, the system of Anderson and LaBauve discloses the gas delivery system has a opaque light barrier. Specifically, LaBauve teaches the gas delivery apparatus can made of numerous materials based upon the desires of the designer including glasses, plastics, and metal alloys. (Column 4, Lines 57-60). Intrinsically, the ability of the device to be made of a metal equates the ability of the device to operate as having an opaque light barrier.

As to Claim 47, the system of Anderson as modified by LaBauve discloses the laboratory animal holder device are separate and distinct, yet does not expressly disclose the thickness of the light barrier. However, at the time the invention was made the thickness of the light barrier would be dependant on the material used in the construction of the holder device. (Column 4, Lines 49-60). Therefore, it would have been obvious to one having ordinary skill in the art to modify the device of Anderson

and LaBauve in a spatially arranged orientation that would prevent heat build-up and prevent the animals from becoming anxious within the enclosed environment.

As to Claims 60 and 61, the system of Anderson as modified by LaBauve as addressed in claim 1 recites all the recited limitations of the claims including the mouse interface capable of holding at least a part of the head of the mouse (Figure 3, Column 4, Lines 4-18) and a scavenging system having a plurality of holes (18) disposed around the mouse interface for removing the anesthesia gas from the exposure site (14) to the exhaust site (16) and out to a vacuum or scavenging source via the outlet (38). (Figures 1-3).

Response to Arguments

Applicant's arguments filed April 7, 2008 have been fully considered but they are not persuasive. Applicant asserts the prior art made of record does not disclose or teach "at least one hole disposed on the front face adjacent to the multiple living specimen interfaces capable of drawing in anesthesia gas," and Examiner's allegation of turning the device of LaBauve on its side is not obvious. Examiner respectfully disagrees with Applicant's assertions. Regarding Applicant's first assertion, the unitary construction of the device of LaBauve includes at least one hole (40) on the front face adjacent to the multiple living specimen interfaces (12) capable of drawing in anesthesia gas. Regarding Applicant's second assertion, Applicant has not asserted that the ability of the device to be placed on its side will result in a loss of functionality of the LaBauve device to operate. Furthermore, as Applicant's claims are directed towards an

apparatus, the placement of the device must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, as gases are being delivered to the mice, the device is fully capable of operating whether upright on its side. Thus, in light of the aforementioned reasoning, the rejection of the claims has been maintained.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justine R Yu/
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